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offer that service except at a loss. Access further contends that Ameritech Illinois has refused to consider its requests for additional discounts. Access suggests that Ameritech's pricing policies therefore do not satisfy the Act. Access Brief at 5-6.

#### AT&T

AT&T suggests that Ameritech's resale offering is inadequate because it does not offer Service Transport Facilities ("STF") on a wholesale basis, such that resellers must purchase them a "pair at a time." AT&T Ex. 2.0 at 34. AT&T also maintains that Ameritech fails to provide resellers with adequate notice of new services. AT&T further objects to Ameritech's requirement that it make a special request if it wishes to combine Ameritech's unbundled local switching element with its own operator services or directory assistance. AT&T Ex. 5.0 at 32.

In its brief, AT&T contends that Ameritech wrongfully refuses (1) to provide customized routing of AT&T's customers' DA and OS calls to AT&T's DA and OS platforms in a resale environment and (2) to offer the unbundled network platform without OS and DA as a standard offering, except pursuant to the BFR process. Under the governing FCC rule, Ameritech must combine unbundled network elements in any manner that is technically feasible and would not impair other carriers' ability to obtain access to UNEs or to interconnect. 47 C.F.R. § 51.315(c). AT&T suggests that the provision of unbundled access to OS/DA satisfies these conditions in an unbundled network platform environment and a resale environment.

#### CompTel

Like AT&T, CompTel maintains in its direct testimony that the Act and federal rules contemplate that new providers of local service must have access to customized or selective routing of all categories of traffic. CompTel Ex. 1.0 at 21. Its witness Gillan maintains that it is impossible to tell from Ameritech's testimony, which indicates that new software may be necessary to satisfy this requirement, whether Ameritech Illinois intends to comply. CompTel Ex. 1.0 at 21.

#### MCI

In its brief, MCI contends that Ameritech cannot satisfy the FCC requirement that it provide nondiscriminatory access to OS/DA because the record shows that Ameritech cannot unbundle its operator services and directory assistance from its total resale offering to enable a reseller to route its OS/DA traffic to itself, to a third party, or to Ameritech. MCI Brief at 18 (citing FCC's Second Report and Order, ¶ 101).

As to Ameritech's resale offering generally, MCI argues in its brief that the negotiated contracts merely reference the applicable tariffs, which fail to comply with the requirements of the Commission's Wholesale Order. MCI Brief at 21 (citing Staff Ex. 4.02 at 5; Tr. 1592-95). Citing the testimony of Staff witness Jennings, MCI suggests that Ameritech's resale tariff fails to provide the required treatment of branding and unbundling of OS/DA from wholesale services. MCI Brief at 21 (citing Staff Ex. 4.02 at 6-8).

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#### Staff

In the direct phase of this proceeding, Staff testified that it disagrees with Ameritech's position that its resale tariff complies with Section 251(c)(4) and the FCC's Order. However, during the rebuttal phase, Staff witness Jennings offered further testimony and suggested four areas where the November 20 tariff did not comply with the Commission's Resale Order: (a) branding and unbundling of operator and directory assistance from wholesale services; (b) Mirroring of Retail Tariff for term commitments of Priority and Priority Plus rate elements; (c) PBX and Centrex trunks; and the fact that Busy Line Verify and Busy Line Interrupt were excluded. Staff Ex. 4.02 at 5. On cross examination, He further testified that Ameritech had updated its resale tariff regarding the sections governing priority and priority-plus, PBX-Centrex, key line, busy line, and busy line interrupt. He further testified that those revisions were consistent with the Commission's Resale Order. Tr. 1592-93.

Staff delineates at length the statutory and regulatory provisions governing Ameritech's resale offering. Staff Brief at 97-98. It proposes that the Commission's Resale Order is consistent with Section 252(d)(3), observing that the Commission specifically addressed the issue of wholesale pricing in the Resale Order. Staff also notes that the FCC approvingly mentioned the Commission's TSLRIC cost studies in its Order. Staff Brief at 100 (citing FCC Order, ¶915). It is also noted that the CCT, MFS, and TCG agreements allow resale of services obtained at wholesale rates. Ameritech Illinois is furnishing wholesale services to MFS, but not to CCT or TCG. Staff Brief at 101 (citing Ameritech Ex. 2.2, Schedule 1, at 19). CCT has one resale customer, to which it provides resold Centrex. Because Ameritech is not furnishing wholesale services to CCT, Staff recommends that the Commission find that Ameritech is not complying with the Section 271(c) requirements for its resale offering.

#### Ameritech

Ameritech witness Gebhardt testified that all of its telecommunications services that are available at retail are also available for resale at wholesale rates to competing carriers. Ameritech Ex. 2.0 at 46-47.

Ameritech argues that its wholesale/resale offerings comply with this Commission's Wholesale Order in Docket No. 95-0458/0531, with Sections 251(c)(4) and 252(d)(B), and, therefore, with the competitive checklist. Section 251(c)(4) imposes upon Ameritech a duty to make available for resale at wholesale rates any telecommunications services that it makes available to its own customers and to do so on a nondiscriminatory basis, and Section 252(d)(3) provides that the Commission shall determine wholesale rates on the basis of retail rates charged to the subscriber less avoided costs. In the Wholesale Order in Docket 95-0458/0531, we comprehensively addressed" the pricing requirement under Section 252(d)(3) and adopted a pricing methodology. MCI Arbitration Decision, Docket 96-AB-006, at 45; First Report and Order, ¶ 878-935. Ameritech notes that the FCC subsequently found that the Commission's methodology conformed with the Act. Thus, Ameritech takes the position that, to the extent that it has complied with the mandate of the Wholesale Order, it also has complied with Section 252(d)(4) and the competitive checklist. Section 271(c)(2)(B)(xiv). Ameritech has filed tariffs in conformity with the Wholesale Order in ICC No. (for competitive services) and in ICC No. 20 (for noncompetitive services). Moreover, Ameritech Illinois argues that it is currently furnishing resold service at

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wholesale rates to MFS, pursuant to the parties' interconnection agreement, and that such services are available for purchase pursuant to the tariffs cited above. Thus, Ameritech urges the Commission to find that it has satisfied this element of the checklist.

Concerning Access' complaint that Ameritech is hampering competition by reselling services at a wholesale discount level that averages 17.5% overall and 7.3% for trunk terminations, Ameritech answers that Access has provided no legal basis for disputing the level of the discount. Access does not allege that Ameritech Illinois has miscalculated the avoided costs of offering wholesale services generally or of offering DID trunks in particular. Nor has Access proffered any evidence to support its claim that competition will be inhibited by legally prescribed discount levels. With respect to Access' complaint that Ameritech has refused to negotiate further discounts, the Company responds that there is no legal or factual basis for that claim.

Regarding AT&T's contention that Ameritech's retail/wholesale offering is inadequate because it does not offer service transport facilities ("STF") on a wholesale basis, Ameritech notes that it has revised its retail tariff to include STF services on a wholesale basis. Ameritech Ex. 1.1 at 42. With respect to AT&T's complaint that Ameritech fails to provide resellers with adequate notice of new services, Ameritech notes that it has agreed to a 45-day advance notice provision with AT&T and to make advance notice available to other resellers as well. Ameritech Ex. 1.1 at 45. Thus, the Company contends that it has satisfactorily addressed these issues.

With respect to the issue of selective routing of OS/DA traffic, Ameritech states that it will provide selective routing through the use of line class codes. The Company asserts, however, that it takes far fewer line class codes (as few as one) to provision selective routing in the ULS context than to provision selective routing in the resale context. As a result of AT&T's BFR requesting selective routing. Ameritech Illinois has determined that selective routing, when requested in the context of ULS, is technically feasible in existing Ameritech switches. Thus, Ameritech no longer will require purchasers of ULS that request selective routing of OS/DA traffic to their own OS/DA platform (or the platform of another provider) to submit a BFR when such requests are "normal" in scope and require no more than 25 line class codes to fulfill; such selective routing will be offered on a standard tariff basis. Under this proposed arrangement, Ameritech will unbundle and custom route OS/DA traffic to specified trunk ports for the purpose of either (1) routing the traffic to the OS/DA platform of another provider or (2) routing traffic over separate trunks to the Ameritech Illinois OS/DA platform so that the traffic can be unbranded or rebranded with the name of the requesting carrier. Ameritech Illinois suggests that this should address AT&T's concern that its major market entry strategy will involve the purchase of network elements/ULS in conjunction with selective routing to AT&T's OS/DA platform.

However, with respect to AT&T's position that Ameritech should be required to provide selective routing of OS/DA in a resale environment, Ameritech contends that the uncontroverted record evidence establishes that 400 to 700 line class codes are required per carrier/per switch when a carrier wishes to resell Ameritech's services in conjunction with the selective routing of OS/DA traffic to a separate platform. In Ameritech's view, AT&T's position is based on speculation that Ameritech will not need to replicate all line class codes used by all customers in a resale environment, because resellers will request to sell less than all of Ameritech's' services. Ameritech suggests that this claim, in addition to being unsupported, contradicts AT&T's testimony that it intends to offer every service that Ameritech offers (AT&T Ex. Supp. 3.2, p. 2 of 1-7-97 letter). Because Ameritech requires 400 to 700 line class codes per switch in the context of selective

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routing and resale, however, Ameritech faces a very real possibility of exhausting the available line class codes in any given switch. It is urged that this is plainly an issue of technical feasibility under 47 C.F.R. ¶ 51.5.

Finally, as to AT&T's claim that Ameritech can also use "AIN" technology to perform customized routing, Ameritech Illinois responds that the Commission already has addressed the issue of access to AIN triggers, finding that in light of network reliability concerns, the issue needs further investigation in an appropriate national forum.

#### Commission Conclusion

We find that Ameritech has established that all of its telecommunications services that are available at retail are also available for resale at wholesale rates to competing carriers. Ameritech makes available OS/DA with its resold services and with its unbundled local switching service. Ameritech Illinois also offers to unbundle OS/DA services from its unbundled local switching service. Further, it offers to unbundle OS/DA services from its resale offering and to rebrand such services where they are purchased by carriers in conjunction with other resold services to the extent technically feasible. Ameritech Ex. 2.0 at 46-47.

These wholesale/resale offerings comply with our Wholesale Order in Docket 95-0458/0531, with Sections 251(c)(4) and 252(d)(B), and, therefore, with the competitive checklist. In the Wholesale/Resale Order, comprehensively addressed the pricing requirement under Section 252(d)(3) and adopted a pricing methodology. MCI Arbitration Decision, Docket 96-AB-006, at 45; First Report and Order, \$\infty\$ 878-935. The FCC subsequently found that the Commission's methodology conformed with the Act. Thus, just as Ameritech has also complied with the mandate of the Wholesale/Resale Order, it has also complied with Section 252(d)(4) and the competitive checklist. Section 271(c)(2)(B)(xiv). Ameritech has filed tariffs in conformity with the Wholesale Order in ICC No. (for competitive services) and in ICC No. 20 (for noncompetitive services). Although Access has challenged the wholesale rates, we agree with Ameritech that Access has provided no legal basis for disputing the level of the discount. Access has presented no evidence that Ameritech Illinois has miscalculated the avoided costs of offering wholesale services, nor has Access proffered evidence to support its claim that competition will be inhibited by the discount levels we have prescribed. Thus, with respect to Access' complaint that Ameritech has refused to negotiate further discounts, there is no legal or factual basis for that claim. Ameritech also established that it currently is furnishing resold service at wholesale rates to MFS, pursuant to the parties' interconnection agreement, and that such services are available for purchase pursuant to the tariffs cited above. Thus, Ameritech has satisfied this element of the checklist.

AT&T's contention that Ameritech's retail/wholesale offering is inadequate because it does not offer service transport facilities ("STF") on a wholesale basis is rendered moot by Ameritech's revision to its retail tariff adding STF services on a wholesale basis. Ameritech also has resolved AT&T's complaint that Ameritech fails to provide resellers with adequate notice of new services, by agreeing to a 45-day advance notice provision with AT&T, and to make advance notice available to other resellers as well. Finally, Ameritech has answered AT&T's complaint that it would not provide selective routing in the ULS environment. As a result of AT&T's BFR requesting selective routing, Ameritech has determined that selective routing, when requested in the context of ULS, is technically feasible in existing Ameritech switches. Thus, Ameritech no longer will require ULS purchasers that request selective routing of OS/DA traffic to their own OS/DA

#### 96-0404 H.E PROPOSED ORDER

platform (or the platform of another provider) to submit a BFR; such selective routing will be offered on a standard tariff basis when such requests fall within the normal scope of requiring the use of no more than 25 line class codes. This should allay AT&T's fears that its major market entry strategy will be impeded by an inability to purchase network elements/ULS in conjunction with selective routing to AT&T's OS/DA platform. We agree with Ameritech, however, that the record establishes that 400 to 700 line class codes are required per carrier/per switch when a carrier wishes to resell Ameritech's services in conjunction with the selective routing of OS/DA traffic to a separate platform. Accordingly, Ameritech's position of responding to requests for selective routing in the resale context on a case-by-case basis is entirely reasonable. We also reject AT&T's claim that Ameritech presently can use "AIN" technology to perform customized routing. We already have addressed the issue and found that, in light of network reliability concerns, the issue needs further investigation in an appropriate national forum.

#### VI. <u>MISCELLANEOUSISSUES</u>

#### A. Performance Monitoring and Reporting

#### Positions of the Parties

AT&T argues for the establishment of a detailed set of performance measurements that purportedly would serve to monitor Ameritech's checklist compliance. AT&T Ex. 3.0 at 8-13; AT&T Ex. 3.1 at 5-29, Attach. I-III; AT&T Brief at 40. In response, Ameritech asserts that this is not the proper proceeding for addressing these issues, and that these issues have already been addressed in the negotiations and arbitrations between Ameritech Illinois and AT&T. Ameritech observes that the Commission has previously addressed the issue of what performance monitoring reporting procedures should be included in Ameritech Illinois' interconnection agreements on at least two occasions. Ameritech Brief at 111-12; AT&T Arbitration Decision, at 11-14, 30-31, 37-38, 46-47; MCI Arbitration Decision, at 56-62. Ameritech Illinois also argues that even if this were an appropriate forum for addressing AT&T's proposals, those proposals should be rejected on the merits for the reasons expressed in the above arbitration decisions, and the reasons stated by Mr. Mickens in this proceeding. AI Brief at 112-13 (citing Tr. 1313-49).

#### Commission Conclusion

The Commission agrees with Ameritech that this is not the proper proceeding for resolving these issues. These issues already have been addressed in negotiations between the parties and in the AT&T and MCI arbitrations. Moreover, even assuming AT&T's proposals were properly raised in this proceeding, we find that they lack merit and should be rejected.

#### VII. FINDINGS AND CONCLUDING PARAGRAPHS

Based on the entire record in this proceeding and being fully advised in the premises, the Commission is of the opinion and finds that:

1) the Commission initiated this proceeding to investigate and gather information regarding Ameritech Illinois' compliance with the "competitive checklist"

requirements of Section 271(c) of the federal Telecommunications Act of 1996, in order to fulfill our consulting role with the FCC under Section 271(d)(2)(B) of the Act:

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- while our investigation is primarily factual in nature, the parties to this proceeding and Staff have raised a number of legal issues in this proceeding regarding the proper interpretation of Section 271(c); although these issues are ultimately within the FCC's domain, and not ours, we cannot avoid addressing certain of these legal issues even if our conclusions on these issues are not binding;
- Ameritech has negotiated and executed, and we have approved, a binding interconnection agreement with CCT; CCT is not affiliated with Ameritech and is a competing provider of telephone exchange service to residential and business subscribers in Illinois; CCT offers such service either exclusively or predominantly over its own telephone exchange service facilities;
- 4) the Commission finds that the phrase "is providing", as used in Section 271(c)(1)(A) of the Act, should be interpreted to mean "actually furnishing" or "making available" pursuant to the standards set forth herein;
- Applying this interpretation of the phrase "is providing" to the record facts, Ameritech, through its interconnection agreement with CCT, has not complied with the requirements for each of the "competitive checklist" items set forth in Section 271(c)(2)(B);
- Based on the above findings and our interpretation of the phrase "is providing", Ameritech has not satisfied certain of the requirements of Sections 271(c)(1)(A) and 271(c)(2)(A);
- 7) that the findings of fact and conclusions of law set forth in the prefatory portion of this Order are hereby adopted as findings of fact and conclusions of law;
- 8) any outstanding motions are hereby disposed of in a manner consistent with this Order.

IT IS THEREFORE ORDERED that this Commission recommends to the FCC that Ameritech Illinois has not complied with the competitive checklist requirements of Section 271(c)(2)(B) of the Act.

IT IS FURTHER ORDERED that this Commission should recommend to the FCC that Ameritech Illinois has not met the requirements of Sections 271(c)(1) and 271(c)(2)(A) of the Act.

IT IS FURTHER ORDERED that this Commission may at any time hereafter reexamine the issues investigated herein.

ORDER DATED:
BRIEFS ON EXCEPTIONS DUE:
REPLY BRIEFS ON EXCEPTIONS DUE:

March 6, 1997 March 14, 1997 March 21, 1997

#### STATE OF ILLINOIS



#### ILLINOIS COMMERCE COMMISSION

March 21, 1997

ILLINOIS COMMERCE COMMISSION
On Its Own Motion

96-0404

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Investigation concerning Illinois Bell Telephone Company's compliance with Section 271(c) of the Telecommunications Act of 1996.

24

## NOTICE OF HEARING EXAMINER'S RULING AND NOTICE OF SCHEDULE

TO ALL PARTIES OF INTEREST:

Notice is hereby given that the Hearing Examiner makes the following ruling with respect to Ameritech's Motion to Suspend the Schedule for Exceptions and Establish Procedures for the taking of Additional Evidence:

The parties, if they so choose, may supplement the record with new or updated information with respect to any of the checklist items in accordance with the following schedule. Any supplement or update shall either relate to new or previously unavailable information. Cumulative evidence will be stricken.

Notice is also given of the following schedule:

April 4, 1997 Supplement

Supplemental Direct Testimony (Illinois Bell)

April 18, 1997

Supplemental Direct Testimony (Staff and Intervenors)

May 2, 1997

Supplemental Rebuttal Testimony (Illinois Bell)

May 6 - 7, 1997

Cross Examination of Supplemental Testimony

Supplemental Initial Briefs

May 21, 1997

May 14, 1997

Supplemental Reply Briefs

Sincerely,

Donna M. Caton Chief Clerk

CÉI

Hearing Examiner: Mr. Guerra

Service List - 96-0404

David H. Gebhardt Vice President Regulatory Affairs
Illinois Bell Telephone Company
555 East Cook Street, Fl. 15
Springfield, IL 62721 \*

Louise Sunderland Illinois Bell Telephone Company (Ameritech) 225 W. Randolph St., fl. 278 Chicago, IL 60606

Anthony Palazzolo Director - Business Development A.R.C. Networks, Inc. 160 Broadway, Ste. 908 New York, NY 10038 \*

Kevin M. Walsh & Glen Richards A.R.C. Networks, Inc. Fisher, Wayland, Gooper, Leader & Zaragoza 2001 Pennsylvania Ave., N.W., Ste. 400 Washington, DC 20006 \*

Patricia A. Caine Ameritech Advanced Data Services of Illinois, Inc. 225 W. Randolph, Ste. 23C Chicago, IL 60606 \*

J. Lyle Patrick Vice President and Controller Consolidated Communications Telecom Services Inc. 121 S. 17th Street Mattoon, IL 61938 -

Ed Pence Consolidated Communications 121 S. 17th St. Mattoon, IL 61938 \*

> Carrie Hightman Atty. for Consolidated Communications Schiff Hardin & Waite 7200 Sears Tower Chicago, IL 60606 \*

Rosalie J. Leib, Corporate Counsel Diginet Communications Inc. - Midwest Lieb and Associates 310 W. Wisconsin Ave., #1000 Milwaukee, WI 53203-2200 \*

Gerald A. Ambrose
Diginet Communications Inc. - Midwest Gerald A. Ambrose One First National Plaza Chicago, IL 60603 \*

Let D. Ferkins

Digital Services Corporation

d/b/a Virginia Digital Services Corp.

2300 Clarendon Slvd., Ste. 800

Arlington, VA 22201 \* Hal B. Perkins

Scott McMahon, Regulatory Attorney LCI International Telecom Corp. 8180 Greensboro Dr., Ste. 800 McLean, VA 22102 -

Joan Campion & Brian A. Rankin MCI Telecommunications Corporation 205 N. Michigan Ave., Ste. 3700 Chicago, IL 60601

Lisa A. DeAlba State Regulatory & Governmental Affairs MCI Metro Access Transmission Services, Inc. 205 N. Michigan Ave., Ste. 3700 Chicago, IL 60801 \*

> Gordon P. Williams, Senior Actorney Office of General Counsel MCI Metro Access Transmission Services, Inc. 2400 N. Glenville Drive Richardson, TX 75082 \*

> > Stephen C. Gray & David R. Conn McLeod Telemanagement, Inc. Town Centre, Ste. 500 221 Third Avenue 52 Cedar Rapids, IA 52402 \*

Joseph Kahl Director, Regulatory Affairs MFS Intelenet of Illinois, Inc. 6 Century Drive, Suite 300 Parsippany, NJ 07054 \*

Mary Albert, Esq. Acty Appelo, Esq.
Acty, for MFS Incelenet
of Illinois, Inc.
Swidler & Berlin, Chartered 3000 K St., N.W., Ste. 300 Washington, DC 20007 \*

Ruth Durbin Assistant Director - Central Region Regulatory Affairs MFS Intelenet of Illinois, Inc. 1 Tower Lane, 16th Fl. Oakbrook Terrace, IL 60181 \*

Richard Goldstein, Vice President Microwave Services, Inc. 200 Gateway Towers Pittsburg, PA 15222 \*

Richard Vanderwoude, President One-Stop Communications, Inc. 15 Sale Creek Lane Hinsdale, IL 60621 \*

Helen Levine, Consultant

Active Parties

Service List - 96-0404 Page 2

Network Operations SBMS Illinois Services, Inc. 930 National Parkway Schaumburg, IL 60173 \*

Dennis K. Muncy & Joseph D. Murphy Meyer, Capel, Hirschfeld, Muncy, Jahn & Aldeen, P.C. Attys. for Intervenors 306 West Church Street P.O. Box 6750 Champaign, IL 61326-6750 \*

THEN YOU DE LATEUR IN LOS

Julie Grimaldi Sprint Communications L.P. d/b/a Sprint Communications Company 8140 Ward Parkway Kansas City, MO 64114 \*

Michael Earls & J. Manning Lee TCG Illinois, Inc. Two Teleport Dr., Ste. 302 Staten Island, NY 10311-1011

Douglas W. Trabaris & Madelon Kuchera Public Utilities Bureau
TCG Illinois, Inc. 100 W. Randolph St., 12th Fl.
233 S. Wacker Dr., Ste. 2100 Chicago, IL 60601 \* TCG Illinois, Inc. 233 S. Wacker Dr., Ste. 2100 Chicago, IL 60606 \*

Randall B. Lowe & Kecia Boney Piper & Marbury, L.L.P.
TCI Telephony Services of Illinois, Inc.

M.W.
P. O. Box 2461 1200 Nineteenth Street, N.W. Washington, D.C. 20036-2430 \*

Calvin Manshio Atty. for Intervenors Manshio & Wallace 4753 N. Broadway Ave., Sce. 732 Chicago, IL 60640 \*

Alan Jastczemski Telefiber Networks of IL, Inc. 688 Industrial Drive Elmhurst, IL 60126 \*

Clyde Kurlander Attorney for Applicant Attorney for Applicant "Manager-Regulatory Services
U.S. OnLine Communications L.L.C. Consolidated Communications
3 First Nat'l. Plaza, Ste. 2315 220 Oak Park Ave., #1V
Chicago, IL 60602 \* Oak Park, IL 60302 \*

Ronald W. Gavillet & Robert R. Neumann USN Communications, Inc. 10 S. Riverside Plaza, Ste. 401 Chicago, IL 60606 \*

Robert G. Berger & Michael C. Wu Attys. for Applicant City of Chicago
Swidler & Berlin, Chartered 30 N. LaSalle St., Ste. 900
WinStar Wireless of Illinois, Inc. Chicago, IL 60602 \*
3000 K Streer N N Ste 300 3000 K Street N.W., Ste. 300 Washington, D.C. 20007 \*

Dane Ershen, Vice President - Michael W. Ward, John F. Ward, Jr. & Henry T. Kelly Attys. WorldCom, Inc. C'Keefe, Ashenden, Lyons & Ward 30 N. LaSalle, Ste. 4100 Chicago, IL 60602 \*

Charles J. Gardella & Tim Gardella WorldCom, Inc. 2800 River Road, Ste. 490 Des Plaines, IL 60018 \*

William A. Davis, II, C. Edward Watson, II Joan Marsh & Cheryl Urbanski AT&T Communications of Illinois, Inc. 227 W. Monroe St., Ste. 1300 Chicago, IL 60506 \*

William E. McQueen AT&T Communications of Illinois, Inc. 913 South Sixth St., Fl. 3 Springfield, IL 62703 \*

Janice A. Dale Assistant Attorney General

Andrew O. Isar Telecommunications Resellers Gig Harbor, WA 98335-4461 \*

Roger Christ Illinois Commerce Commission 527 E. Capitol Ave. F.O. Box 19280 Springfield, IL 62794-9280 \*

Linda L. Oliver & Jeremy B. Miller Hogan & Hartson L.L.P. 555 Thirteenth St., N.W. Washington, D.C. 20004 \*

Kristen M. Smoot

John Gomoll Illinois Commerce Commission 160 N. LaSalle, Ste. C-800 Chicago, IL 60601-3104 \*

Jack A. Pace & Conrad R. Reddick

Karen L. Lusson Citizens Utility Board 208 S. LaSaile St., Ste. 1760 Chicago, IL 60604 +

\* Active Parties

Service List - 96-0404 Page 3

Andrew L. Regitsky Vice President, State Affairs CompTel 1140 Connecticut Ave., Ste. 220 Washington, D.C. 20036

Duane A. Feurer

Atty. for Sprint Communications
Company L.P.
Ross & Hardies
150 N. Michigan Ave.
Chicago, IL 60601-7567 \*

John F. Tharp, President Illinois Telecommunications Association 300 E. Monroe St. P.O. Box 730 Springfield, IL 62705 \*

Allan Hubbard, Counsel Shared Technologies Fairchild 300 W. Service Rd. P.O. Box 10804 Chantilly, VA 22021 \*

G. Darryl Reed, David W. McGann & Carmen L. Fosco Office of General Counsel Illinois Commerce Commission 160 N. LaSalle, Ste. C-800 Chicago, IL 60601-3104 \*

Linda Buell Illinois Commerce Commission 527 E. Capitol Ave. P.O. Box 19280 Springfield, IL 62794-9280 \*

Julie Musselman Illinois Commerce Commission 527 E. Capitol Ave. P.O. Box 19280 Springfield, IL 62794-9280 \*

\* Active Parties

ICC STAFF EX. 4.02

# SUPPLEMENTAL REBUTTAL TESTIMONY OF JAKE E. JENNINGS

TELECOMMUNICATIONS DIVISION

ILLINOIS COMMERCE COMMISSION

DOCKET 96-0404

AMERITECH ILLINOIS

**JANUARY** 7, 1997

My name is Jake E. Jennings and my business address is 527 E. Capitol Ave., 2 A. Springfield, Illinois 62794. 3 4 Are you the same Jake E. Jennings that filed testimony on November 8, 1996 and 5 0. 6 November 22, 1996, in this proceeding? 7 Yes. Α. 8 What is the purpose of your supplemental rebuttal testimony? 9 Q. The purpose of my supplemental rebuttal testimony is to respond to the supplemental 10 testimony of Mr. David H. Gebhardt and Mr. Joseph A. Rogers on behalf of Ameritech. 11 12 Specifically, I will address Ameritech's operational support-systems, unbundled network 13 elements, including pricing, unbundled local switching, and current resale tariff. In addition, I have been requested by Staff witness TerKeurst to address an alternative to defining 14 15 "predominantly facilities-based" competitors. 16 Operation Support Systems 17 I. 18 Q. On page 3 of Mr. Rogers' Supplemental Rebuttal Testimony, he states that 19 Ameritech's Operation Support Systems ("OSS") must be "operational in the marketplace 20 and/or have undergone sufficient testing to ensure that they will provide competitors with the 21 requisite OSS-related capabilities." Do you agree with this position?

Please state your name and business address.

Q.

I

#### ICC STAFF EX. 4.02

Somewhat. I agree that it is Ameritech's responsibility to ensure that its OSS are 1 Α. 2 functional. The best manner to evaluate whether Ameritech's OSS are functional is actual 3 use, rather than "sufficient testing" by Ameritech. Mr. Rogers' statement that he "cannot comment" on the performance of Ameritech's OSS on the carrier customer's side of the interface is troubling. Ameritech Illinois Ex. 9.0 at 16. The OSS are mutually dependent on 5 both Ameritech and the interconnecting carriers. Ameritech should not simply have the OSS 6 7 set up on its side of the interface and await interconnection and use by other carriers. In order for the OSS to work in a commercially feasible manner, Ameritech has the added 8 9 responsibility to ensure the connecting carriers have sufficient information of Ameritech's OSS, including working with carriers that experience rejected orders and/or orders that 10 11 require manual intervention.

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- Q. Is it sufficient for Ameritech's OSS to have undergone internal testing in order for the OSS to be deemed operational?
  - A. No. As Mr. Rogers' supplemental testimony demonstrates, there have been errors with the testing of Ameritech's OSS for ordering of resale services. Just because Ameritech has completed internal testing of its various OSS, there is no assurance that other carriers will be able to effectively utilize the OSS in a commercially feasible manner. There may be oversights in a carrier's implementation of Ameritech's OSS specifications manuals.

    Alternatively, Ameritech's OSS specification manuals may not be entirely clear, so that a carrier may reasonably interpret the manuals differently than interpreted by Ameritech. Such

a situation would result in an error and failure to complete an order. Therefore, it is 1 essential that Ameritech's OSS meet the following criterion: internal testing by Ameritech; 2 testing with other carriers; and operational readiness. The operational readiness is the most 3 difficult criteria to define and can be different for each carrier. It is dependent on a carrier's 4 testing with Ameritech to a level where the carrier can successfully utilize Ameritech's OSS 5 6 on a commercially feasible level. Each carrier should develop benchmarks that will measure its progress to predict the degree of successful orders that will be processed by Ameritech. 7 8 9 Please explain what you mean by in stating that each of Ameritech's OSS functions Q. 10 must be able to be utilized on a commercially feasible level? 11 A. A commercially feasible level implies that carriers are able to utilize Ameritech's OSS 12 in a sufficient manner that will accommodate the demand of a new LEC's services by end 13 users. For example, in order for a carrier to effectively compete in the local exchange 14 market, it must be able to offer its services to the general public with the expectation that all service orders will be processed. 15

- 17 Q. Is it your understanding that Ameritech continues to update its OSS specification 18 manuals? If so, how difficult is it to determine if Ameritech's OSS are commercially 19 operational?
- 20 Yes. It is my understanding that Ameritech continues to update its ordering A. 21 specification manual and is expected to issue a revision in early January of 1997. In order to

determine the number of revisions Ameritech has made to its specification manuals, I have
submitted a data request to Ameritech. If Ameritech issues a revised specification manual
with significant changes, then it makes the previous testing obsolete. Carriers such as AT&T
will have to retest the ordering OSS to ensure that both their system and Ameritech's system
are commercially functional. Continual revisions to the specification manuals by Ameritech
signifies a degree of uncertainty regarding the operational readiness of Ameritech's OSS.

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#**8**25 (2)

- 8 Q. Have you reviewed the test results of AT&T attached to Mr. Rogers' supplemental
  9 rebuttal testimony?
  - A. Yes. One troubling fact of the test results is the relative number of orders processed through "manual intervention." Even though the orders are successfully processed through manual intervention, there is a question of why 47 out of 67-(70 percent) processed orders required manual intervention. An even more critical question arises; does Ameritech have sufficient capacity to process orders in a commercially feasible manner where 70 percent of the orders require manual intervention? In order to further evaluate this question, I have submitted data requests to Ameritech.

- Q. Have there been any test results between Ameritech and other carriers regarding
  Ameritech's pre-service ordering function?
- A. No. I am not aware of any test results between Ameritech and other carriers regarding pre-service ordering function utilizing Ameritech's OSS.

| 1 | II. | Resale |
|---|-----|--------|
|   |     |        |

- 2 Q. In your rebuttal testimony, you stated that you did not have time to sufficiently review
- 3 Ameritech's wholesale tariff filed on November 20, 1996. (ICC Staff Ex. 4.01 at 9). Have
- 4 you now had time to review Ameritech's wholesale tariff filed on November 20, 1996, and
- does it comport with the Commission's Resale Order and the FCC Order?
- 6 A. Yes, I have reviewed Ameritech's November 20, 1996, resale tariff filing and have
- found four areas where the tariff is not in compliance with the Commission's Resale Order.
- 8 Those areas are: Branding and unbundling of operator and directory assistance from
- 9 wholesale services (Tariff 19, Part 22, Sec. 1, Sheet 3); Mirroring of Retail Tariff for term
- commitments of Priority and Priority Plus rate elements (Tariff 19, Part 22, Sec. 3, Sheet
- 32), PBX, Centrex trunks (Tariff 19, Part 22, Sec. 5, Sheet 16), and Busy Line Verify and
- Busy Line Interrupt were excluded (Tariff 20, Part 22, Sec. 11, Sheet 5). Staff has been in
- discussions with Ameritech who has agreed to file revisions to their resale tariff addressing
- all issues, except branding. However, it is my understanding that Ameritech has not yet
- filed any such revisions. Therefore, it is Staff's intention to recommend an investigation of
- Ameritech's wholesale tariff and compliance with the Commission's Resale Order.

Q. Have you reviewed Ameritech's proposed SGAT and contracts with MFS, TCG, and

19 CCT regarding resale?

| 1                                      | A. Yes. In review of the proposed SGAT, I have found an area where the proposed                                                                                                                                                                                                                                                                                                                                                                                                       |  |
|----------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| 2                                      | SGAT is not in compliance with the FCC Rules. Section 10.5.5 of the proposed SGAT                                                                                                                                                                                                                                                                                                                                                                                                     |  |
| 3                                      | states:                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |
| 4<br>5<br>6<br>7                       | As provided in the Act, Requesting Carrier may not purchase Resale Services unless such services are resold to a person other than Requesting Carrier, its subsidiaries and Affiliates.                                                                                                                                                                                                                                                                                               |  |
| 8                                      | This clause is not consistent with Section 251 or the FCC Rules implementing that Section.                                                                                                                                                                                                                                                                                                                                                                                            |  |
| 9                                      | Section 251(c)(4) of the 1996 Act sets forth the duty incumbent LECs must meet regarding                                                                                                                                                                                                                                                                                                                                                                                              |  |
| 10                                     | resale. This section of the Act requires the incumbent LEC:                                                                                                                                                                                                                                                                                                                                                                                                                           |  |
| 11<br>12<br>13                         | (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and                                                                                                                                                                                                                                                                                                             |  |
| 14<br>15<br>16<br>17<br>18<br>19<br>20 | (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers. |  |
| 21                                     | Section 251(c)(4) basically requires that Ameritech meet the following: (1) it must offer its                                                                                                                                                                                                                                                                                                                                                                                         |  |
| 22                                     | retail services to other carriers at wholesale rates; (2) it may not impose unreasonable or                                                                                                                                                                                                                                                                                                                                                                                           |  |
| 23                                     | discriminatory restrictions on the resale of its retail services; and (3) it may allow a                                                                                                                                                                                                                                                                                                                                                                                              |  |
| 24                                     | restriction on resellers reselling residential services to business customers or vice-versa. A                                                                                                                                                                                                                                                                                                                                                                                        |  |
| 25                                     | simple reading of the statute does not allow the restriction set forth in Section 10.5.5 of the                                                                                                                                                                                                                                                                                                                                                                                       |  |
| 26                                     | proposed SGAT.                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |

| 1                                                        | The FCC rules implementing Section 251(c) also do not allow the restriction in                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2                                                        | Section 10.5.5 of the proposed SGAT. Section 51.613(a) of the FCC's rules allows only two                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 3                                                        | types of restrictions on resale: cross-class selling and short term promotions. Section                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 4                                                        | 51.613(b) states as follows:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 5<br>6<br>7<br>8<br>9                                    | With respect to any restrictions on resale not permitted under paragraph (a), an incumbent LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory.  Ameritech has not made such a showing.                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 10                                                       | I note that this issue is being arbitrated in Docket 96 AB-008 between Sprint and                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 11                                                       | Ameritech. Staff has opposed Ameritech's proposed resale restriction in that docket, as                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 12                                                       | being inconsistent with the FCC's rules. This is also an issue in Docket 96 AA-001, if the                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 13                                                       | negotiated portions of the Ameritech/AT&T agreement are evaluated using the standards for                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 14                                                       | arbitrated agreements.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 15                                                       | In addition, this provision is not consistent with Section 251 or the FCC Rules                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 16                                                       | implementing that Section and paragraph 875 of the FCC Order. Paragraph 875 of the FCC                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 17                                                       | Order states:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 18<br>19<br>20<br>21<br>22<br>23<br>24<br>25<br>26<br>27 | We conclude that section 251(c)(4) does not require incumbent LECs to make services available for resale at wholesale rates to parties who are not "telecommunications carriers" or who are purchasing service for their own use. The wholesale pricing requirement is intended to facilitate competition on a resale basis. Further, the negotiation process established by Congress for the implementation of section 251 requires incumbent LECs to negotiate agreements, including resale agreements, with "requesting telecommunications carrier or carriers," not with end users or other entities. We further discuss the definition of "telecommunications carrier" in Section IX. of the Order. |

- The first sentence of paragraph 875 limits the purchase of wholesale services to (1) non-
- telecommunications carriers and (2) parties who are purchasing for their own use.
- 3 Telecommunication carriers are entitled to purchase wholesale services from Ameritech.
- 4 Ameritech has relied in Docket 96 AB-008 on the clause "who are purchasing service for
- 5 their own use" as the basis for the language in its proposed Section 10.5.5. However, a
- 6 carrier will not be purchasing wholesale services solely for its own use; rather, it will
- purchase wholesale services as a carrier for resale to end users. Therefore, it is entitled,
- 8 according to paragraph 875 of the FCC Order, to purchase wholesale services for its own use
- 9 in addition to the wholesale services purchased for resale. In essence, the carrier, as an end
- user, is entitled to "purchase" resold services from a reseller (including itself) just like any
- 11 other end user. The clause "who are purchasing service for their own use" is intended to
- prevent end users from becoming telecommunications carriers just to purchase service for
- themselves at wholesale rates.

- 15 III. Unbundled Local Switching
- 16 Q. Have you reviewed Mr. Gebhardt's supplemental rebuttal testimony regarding
- unbundled local switching ("ULS")?
- 18 A. Yes. I will comment on three areas of Ameritech's ULS offering through its
- 19 proposed SGAT and Mr. Gebhardt's discussion in his rebuttal and supplemental rebuttal
- 20 testimony. First, I agree with Mr. Gebhardt's Exhibit 1.2, Schedule 1, regarding the
- 21 payment of compensation between purchasers of ULS and other carriers in all but one

respect. Contrary to the Commission's wholesale order, the proposed SGAT provides that purchasers of the ULS will pay the Common Carrier Line ("CCL") charge and 75% of the Residual Interconnection Charge ("RIC"). Mr. Gebhardt also recognizes this fact in his rebuttal testimony. Ameritech Illinois Ex. 1.1 at 52. I disagree with Ameritech's proposed ULS service that requires carriers to pay any originating and/or terminating access charges to Ameritech. (ICC Staff Ex. 4.00 at 6 and 4.01 at 8).

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The second comment I will make is that the proposed SGAT does not include common transport because Ameritech is taking the position that "common transport" is not a network element. Ameritech Illinois Ex. 1.1 at 54. I disagree with Mr. Gebhardt's claim that common transport is not a network element; however, I am not aware of any carrier that has requested common transport as an unbundled network element in any of the arbitration proceedings. A requirement that carriers must purchase dedicated transport to provide end to end telecommunications service (i.e., use of the platform - combining ULS, unbundled loops with dedicated transport) will result inefficient utilization of the network. The inefficient utilization of the network will occur because carriers will not find it cost effective to purchase dedicated transport from an end office to other end offices, including both adjacent end offices and those connected through an Ameritech tandem (i.e., essentially replicating Ameritech's local transport network). Instead, carriers will purchase ULS and dedicated transport to an Ameritech tandem office as mutual compensation traffic for the purpose of providing end to end service by recombining unbundled network elements. Under mutual compensation, Ameritech would then be responsible for terminating the traffic to the called

destination. Therefore, traffic that normally would be directly routed to an adjacent

Ameritech end office will now be routed to Ameritech's tandem and then to the adjacent end

office for completion. This unintended consequence could result in capacity exhaustion of

the tandem since calls that normally would have been directly routed from one end office

switch to another end office switch would be routed to the tandem.

The final comment regards Ameritech's requirement that custom routing must be purchased in conjunction with the ULS. Although I do not necessarily agree that carriers should have to purchase custom routing, I find it odd that Ameritech requires custom routing for ULS, but yet has argued that custom routing is not technically feasible for unbundling operator services and directory assistance from wholesale services.

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#### IV. Pricing of Interconnection and Unbundled Network Elements

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- Q. Have you reviewed Ameritech's proposed SGAT, TCG contract, MFS contract, and CCT contract for compliance with the pricing standards in Section 252(d) of the Act?
- A. Yes. The prices contained in Ameritech's proposed SGAT and the Ameritech/TCG

  contract are the same ones adopted by the Commission in Docket 96 AB-003/4 and 96 AB
  006.¹ However, the prices contained in Ameritech's contracts with MFS and CCT are

  significantly higher than those adopted by the Commission in Dockets 96 AB-003/4 and 96

  AB-006. The listed prices for unbundled loops, nonrecurring charges, and the cross connect

With one exception, the Ameritech/TCG price for DS1 cross connect is significantly less than that adopted in Docket 96 AB-003/4.

rate for collocation are not consistent with Section 252(d). There is no cost basis for the
rates in these agreements. However, in Docket 96 AB-003/4, the Commission set rates for
Ameritech's unbundled network elements, interconnection, and mutual compensation that
were based on Section 252(d) of the Act. Therefore, the rates developed in Docket 96 AB003/4 are the only comparison I have to determine if the rates in the MFS and CCT

There are some significant differences between the rates in the MFS and CCT agreements and those based on Section 252(d) of the Act adopted in the AT&T/Ameritech arbitration proceeding. Therefore, I recommend that the Commission find that the rates for unbundled loops in the agreement are not consistent with Section 252(d) of the Act.

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#### 12 V. Predominantly Facilities-based Competitors --

agreements are consistent with Section 252(d) of the Act.

- Q. Please comment on determining whether a new LEC is providing service predominantly over its own facilities.
- A. As discussed by Staff witness TerKeurst, a relative LRSIC analysis is more appropriate than a "net revenue test" to determine if a carrier is providing service predominantly over its own facilities. Specifically, a relative LRSIC analysis could be used to determine if a carrier is predominantly utilizing its own facilities or relying predominantly on Ameritech's facilities. In order to determine if a carrier is predominantly utilizing its own facilities, the LRSICs for the following network elements must be calculated and identified. In Docket 96 AA-003/4, Ameritech provided the following LRSIC data:

| 1  | unbundled loops in access area A, B, and C, unbundled switching (ULS ports, trunk ports,         |
|----|--------------------------------------------------------------------------------------------------|
| 2  | and usage) and interoffice transport (DS1, DS3, etc.) If a carrier installs its own switch,      |
| 3  | then it has the capacity to service 20,000 to 60,000 lines on average. Since the carrier         |
| 4  | installing its own switch incurs the costs on a total basis as opposed to a per line or customer |
| 5  | basis, the LRSIC of the average switch must be calculated. Since I do not have the average       |
| 6  | number of lines TCG, MFS, and CCT currently have in their respective switches, the               |
| 7  | average number of lines Ameritech's switches have in Access Area A can be used. In               |
| 8  | addition, the average costs per switch for usage must be estimated as well as the average        |
| 9  | costs of transport for mutual compensation. The sum of the carrier's LRSIC can then be           |
| 10 | compared to the amount of costs it incurs in purchasing unbundled loops. If the sum of the       |
| 11 | LRSICs of a carrier's equipment is greater than the sum of the LRSICs of unbundled loops         |
| 12 | purchased from Ameritech, then the carrier is providing local telecommunications service         |
| 13 | predominantly over its own facilities.                                                           |

However, at this time I do not have sufficient information to perform such an analysis. I expect to have the necessary information by the time of hearings to determine if MFS, TCG, and/or CCT meet this criteria. Although I will withhold final judgement until my analysis is completed, however, I do expect that, under a relative LRSIC analysis, a switched-based carrier will meet the predominantly facilities-based standard.

Please explain why using relative LRSICs is more appropriate than a "net revenue Q. test"?

### ICC STAFF EX. 4.02

| 1   | A. The relative LRSIC approach measures the relative costs of providing                          |
|-----|--------------------------------------------------------------------------------------------------|
| 2   | telecommunications service. Where as, the net revenue test measures the value of a               |
| 3   | service(s) by consumers and the manner by which carriers recover their costs. The costs of       |
| . 4 | an element or service reflects the costs to society, rather than the value place on a service by |
| 5   | society. The telecommunications market allows carriers to sell services at prices which do       |
| 6   | not reflect the costs or the manner by which costs are incurred to provide the service. For      |
| 7   | example, a carrier could charge less than costs for local service and charge more than costs     |
| 8   | for long distance service to remain profitable. However, it is the cost of a service or          |
| 9   | element that determines whether a new LEC builds its own or purchases services or elements       |
| 10  | from Ameritech.                                                                                  |
| 11  |                                                                                                  |
| 12  | V. Conclusion                                                                                    |
| 13  | Q. Does this conclude your Rebuttal Testimony?                                                   |
| 14  | A. Yes.                                                                                          |